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FISCAL IMPACT REPORT

ORIGINAL DATE 2/13/2007

SPONSOR Duran LAST UPDATED _____ HB _____

SHORT TITLE Multiple Languages for Certain documents SB 339

ANALYST Schuss

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Unknown	Unknown	Unknown	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)
 Department of Finance and Administration (DFA)
 State Commission of Public Records (SCPR)

SUMMARY

Synopsis of Bill

Senate Bill 339 requires that any document in a language other than English that is delivered to the County Clerk to be recorded be translated into English and filed in both the original version and the English translation.

FISCAL IMPLICATIONS

SCPR reports that there could conceivably be some future impact on operating costs should the document and its translation be permanent records transferred to the State Archives. The agency would then bear the costs of maintaining in perpetuity two documents rather than one. However, it is not possible to estimate what that impact would be, although it likely would not be significant, unless the preponderance of the documents were electronic (the long-term preservation requirements for electronic records are currently under study and preservation costs, which would include periodic migration, are unknown).

DFA notes that the cost of translation is not assigned. Presumably, the cost of the translation must be borne by the person filing the document or by each of the county general funds through the clerk's budget.

SIGNIFICANT ISSUES

According to SCPR, the assumption is that the person filing would be responsible for the translation and its cost, although that is not completely clear. However, regardless of who is responsible and who pays, there are other issues. Since both documents are to be filed and recorded, are both then taken together as the official record? This would seem to be an issue the courts would have to address or one that needs clarifying in the bill. Further, some validation of the accuracy of the translation would seem necessary, particularly if it is, or becomes part of the official record. Who will be responsible for certifying the accuracy of the translation and who will pay for that certification?

According to DFA, this issue perplexes many of their county clerks. For example, Robyn Silva, Otero County Clerk, annually receives a number of documents that are in a foreign language. These documents must be filed and recorded. Not infrequently, Ms. Silva's staff does not know what type of document it is or where to file the document. They usually file the document in a miscellaneous file. Once this is done there is no way for them to track the information because no one can translate the information.

Ms. Silva contacted the County's Attorney and advised him of the situation and his original assessment was not to file or record the document. However, a customer insisted that they prove by law that the County Clerk did not have to file and record the document. The County's Attorney informed the County Clerk's Office that there was no statute that allowed them to do this and they would have to file and record the documents.

Currently, there is no statute that requires documents to be submitted in English. SB-339 allows county clerks to implement a policy regarding documents in a language other than English.

PERFORMANCE IMPLICATIONS

DFA notes that while this bill would solve one problem, it might create another. The bill does not require the person who submits the document to bear the cost of translation, only that the document be translated.

OTHER SUBSTANTIVE ISSUES

DFA adds that Language in the Occupational and Professional Licensing (Section 16.2.3.12) could be of some assistance:

"All documents in a foreign language must be accompanied by an accurate translation in English. Each translation document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original. Each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and faithful translation of the original. Each affidavit shall be signed before a notary public.

The translation of any document relevant to an applicant's application shall be at the expense of the applicant."

QUESTIONS

Who is to bear the cost of the original document's translation?

BS/nt